



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2003

Ms. Susan C. Rocha
Denton, Navarro, Rocha & Bernal
1700 Tower Life Building
310 South St. Mary's Street
San Antonio, Texas 78205-3111

OR2003-5804

Dear Ms. Rocha:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186242.

The San Antonio Water System ("SAWS"), which you represent, received a request for disciplinary actions issued to a named SAWS employee and any records in that employee's personnel file. You state that you have notified affected third parties of their right to brief the issue to this office. *See* Gov't Code § 552.304 (providing for the submission of public comments). You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.111, 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the affected third party. *See* Gov't Code § 552.304.

Initially, we note, and you acknowledge, that a portion of the information responsive to the present request was the subject of a previous ruling from this office. You state that the facts and circumstances surrounding our prior ruling have not changed since the issuance of that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Consequently, we find that you may rely upon Open Records Letter Ruling 2003-5004 (2003) as a previous determination. Thus, you must release or withhold the information in accordance with that ruling. *See* Open Records Decision No. 673 (2001). As portions of the requested information have previously been ruled upon, we turn to your other arguments for the submitted information.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential in accordance with section 552.024. Section 552.117 also encompasses a personal cell telephone number, provided that the cell phone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). SAWS must withhold this type of information pursuant to section 552.117 only to the extent that the respective employee elected to keep this information confidential prior to SAWS's receipt of the current records request.

You have submitted a copy of the form on which the employee whose information is at issue here has elected under section 552.024 to keep certain personal information confidential. This document records the employee's election regarding release of his home address and home telephone number. However, the document does not address the employee's election with respect to his social security number or family member information. Therefore, SAWS may only withhold the employee's home address, telephone, and personal cell phone number under section 552.117(a)(1). We have marked the information that must be withheld under section 552.117. The remaining information you have marked under section 552.117 may only be withheld if SAWS timely received an election for the withholding of this information under section 552.024.

We note that the employee's social security number may nevertheless be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I).¹ *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any the social security number in the responsive records is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act (the "Act") on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by SAWS pursuant to any provision of law enacted on or after October 1, 1990.

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

Section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, SAWS must withhold the driver's license information you have marked from public disclosure pursuant to section 552.130.

The submitted information contains a personal e-mail address that is excepted from disclosure under section 552.137 of the Government Code. Section 552.137 provides that "[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]." *See* Gov't Code § 552.137(a). As there is no indication that the individual to whom the e-mail address belongs has consented to its release, SAWS must withhold each instance of the e-mail address that you have marked under section 552.137 of the Government Code. *See* Gov't Code § 552.137(b) (confidential information described by this section that relates to member of the public may be disclosed if member of public affirmatively consents to its release).

Finally, we note that the submitted information contains a W-4 form, which is excepted from public disclosure by federal law. 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); Attorney General Op. MW-372 (1981). Thus, SAWS must withhold the W-4 form, which we have marked, under section 552.101 of the Government Code.

To summarize, we conclude that: (1) SAWS may continue to rely Open Records Letter Ruling 2003-5004 (2003) as a previous determination, (2) the information we have marked must be withheld under section 552.117, (3) the remaining information you have marked under section 552.117 may only be withheld if SAWS timely received an election for the withholding of this information under section 552.024, (4) a social security number may be confidential under federal law and therefore withheld under section 552.101, (5) the driver's license information you have marked must be withheld section 552.130, (6) the e-mail address you have marked must be withheld under section 552.137, and (7) the W-4 form must be withheld under section 552.101. The remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body

does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 186242

Enc. Submitted documents

c: Mr. Brian Collister
1031 Navarro
San Antonio, Texas 78205
(w/o enclosures)